recognized the injustice of allowing the defendant to use his name even without artifice or deception and of incidentally reaping unearned profits from the plaintiff's established reputation. An attempt has been made to adjust the situation by the application of the so-called "explanatory phrase rule" under which the defendant is enjoined from using his name in the same manner as the prior concern but is permitted to use it with modifications—addition of initials, address, or different arrangements of printed matter—or with explanatory phrases—"not connected with", etc. *L. E. Waterman's Co.* v. *Modern Pen Co.* (1914) 235 U. S. 88, 35 Sup. Ct. 91; *World's Disp. Med. Ass'n.* v. *Pierce* (1911) 203 N. Y. 419; 96 N. E. 738; see *Garcia* v. *Garcia* (D. C. 1912) 197 Fed. 637. This protection to the established business would seem to be inadequate; it is suggested that a more just result could be obtained by holding that if one cannot use one's own name without representing his goods as those of another, then he cannot use his own name at all. See Nims, Unfair Competition, (2nd ed.) § 71. The decision of the instant case is clearly sound and can be supported either on the ground that actual evidence of the defendant's fraud was found or under the doctrine that a corporation is bound not to adopt a name which is likely to confuse its product with that of a competitor. *G. B. McVay & Son Seed Co.* v. *McVay Seed & Floral Co.* (Ala. 1918) 79 So. 116; see *Bates Mfg. Co.* v. *Bates Numbering Mach. Co.* (C. C. 1909) 172 Fed. 892, 896.

VENUE—RESIDENCE OF A PARTY TO THE ACTION—TRUSTEE IN BANKRUPTCY.—On a motion for change of venue in order to comply with § 984 of the N. Y. Code of Civil Procedure, providing that an action must be tried in a county in which one of the parties resides, it was *held* that the residence of a trustee in bankruptcy, for the purpose of fixing the place of trial, is the principal office and place of business of the bankrupt, and not the personal residence of the trustee. *Allen* v. *McCormick* (Supreme Court, 1919) 180 N. Y. Supp. 116.

Although the court admitted that the trustee was the real "party" to the action within § 3338 of the Code, and that § 984 permitted an action in any county in which one of the "parties" resided, the court failed to draw what would seem to be the most logical conclusion and to hold that suit could therefore be brought in the county in which the trustee resides. In refusing to adopt this position, and in support of its stand that the residence of the bankrupt was the residence of the trustee, the court cited *Ball* v. *Mabry* (1893) 91 Ga. 781, 18 S. E. 64. That case, fairly construed, would not seem to be authority for such a proposition. The action there was brought under the Georgia Code, 1882 (4th ed.) § 3406, providing that railroad companies were "liable to be sued in any county in which the cause of action originated", and the plaintiff sued the defendant receiver in the county in which the accident took place. The court held, correctly under the circumstances, that the receiver was subject to suit in any county in which the railroad could have been sued. Although the fact of residence was wholly immaterial under that section of the Code, the court in pure *obiter* added that a receiver "resides in each county through which the railroad passes", and cited no authority. The Georgia court's decision is only authority in a case in which the *locus* of the cause of action is the test of venue. Therefore, there seems to be neither reason nor authority in support of the decision in the instant case. Carried to its logical conclusion, the doctrine would mean that an assignee or ordinary trustee would have

to sue in the jurisdiction in which his assignor or cestui resided. Such a proposition has never been suggested since the assignee and trustee are the real parties to the action. *Peters* v. *Foster* (1890) 56 Hun 607, 10 N. Y. Supp. 389; *Merchants' Loan & Trust Co.* v. *Clair* (1885) 36 Hun 362, aff'd in 107 N. Y. 663.

WILLS—PROVISION THAT DEVISEE SUPPORT THIRD PERSON—NATURE OF BENEFICIARY'S RIGHTS.—The testatrix devised all her property to her children with the provision that they support her husband, but nevertheless without any restriction or limitation whatsoever upon the power of sale of the devised property. An Indiana statute (Burns' Rev. Stat. 1914, § 3046) provided that where "any pecuniary or other provision" was made for a husband in a will, he should take under the will, unless he elected to take under the laws of Indiana. The husband made no such election. *Held,* there was a provision for him in the will. *Chapman* v. *Bender* (Ind. 1919) 124 N. E. 397.

The nature of the rights of a beneficiary of a legacy of support will depend upon the exact wording of the devise. In the instant case, the testatrix would seem to have expressly negatived a charge upon the property by giving it without limitation upon the power of sale. *Cf. Garner* v. *Wills* (1891) 92 Ky. 386, 17 S. W. 1023; *Riddle* v. *Beattie* (1889) 77 Iowa 168, 41 N. W. 606. And as no duties were imposed upon the devisee either in regard to the property or proceeds of the property if sold, there is no basis for inferring a trust. *Zimmer* v. *Sennott* (1890) 134 Ill. 505, 25 N. E. 774; 3 Pomeroy, Equity Jurisprudence (4th ed.) § 1033. However, there is unlimited authority holding the devisee personally liable for the support where he has accepted a devise with a provision like or similar to that in the instant case. *Shired* v. *Nesbit* (1911) 90 S. C. 20, 72 S. E. 545; *Redfield* v. *Redfield* (1891) 126 N. Y. 466, 27 N. E. 1032. It is to be noted, however, that in all these cases there was a charge upon the property in addition to the personal liability; though there seems to be no reason why the personal liability may not be imposed without the charge as in the instant case. The basis of this personal liability would seem to be a promise implied by law and is enforceable by the beneficiary though no consideration moves from him. See *Hodges* v. *Phelps* (1893) 65 Vt. 303, 26 Atl. 625; *Brown* v. *Knapp* (1879) 79 N. Y. 136, 143. As the devisee in the instant case accepted the devise, the right of the husband against him personally would seem to be a provision within the broad wording of the statute in question. Had the devisee not accepted, it would seem that the potential provision in the will would not come within the statute, since it is probable that the persons taking the property upon the devisee's refusal would not be liable for the support.